

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
KEITH DAVID BARNES and) CASE NO. 05-61554 JPK
WENDY LYNN BARNES,) Chapter 7
)
Debtors.)

ORDER FOR HEARING

On July 7, 2005, Centier Bank filed its Application for Abandonment with respect to the debtors' real property located at 2913 - 42nd Street, Highland, Indiana. Proper notice of the Application was served on all parties-in-interest, including the debtors and the debtors' counsel, and on August 1, 2005, the Court entered an order approving the Application of Centier Bank. That order is docket record entry #12. Docket record entry #13 is an "Objection to Motion to Abandon Filed by Centier Bank" filed by the debtors on August 1, 2005. Given the fact that the Court's August 1, 2005 order was entered electronically in advance of the debtors' August 1, 2005 motion, the order was entered in advance of the objection: the Court also notes that the objection was late-filed pursuant to the properly-computed objection deadline for the objection stated in the creditor's notice, i.e., July 27, 2005.

Ordinarily, the Court would enter an order which denied the debtors' objection as being untimely filed, or as being without any cognizable ground. However, intriguingly, the objection states that "(f)rom the Debtors' schedules it is clear that they have equity in the subject property". Interestingly, the Chapter 7 Trustee filed a no asset report on May 10, 2005, which indicates that in the Trustee's opinion, there was no administrable value in the debtors' real estate for the benefit of this Chapter 7 estate – an assertion which the debtors' Objection appears to contradict.

Why the debtors' counsel filed this objection is not clear to the Court. The stated ground is that the creditor's motion "was filed only for the purposes of leveraging Centier's position in its

attempt to negotiate a reaffirmation agreement and/or to incur legal fees that will, in turn, be assessed against the debtors". The objection states that the motion was unnecessary, apparently in view of the fact that the Trustee had filed a no asset report. While perhaps a no asset report logically results in the Trustee's "abandonment" of property from a bankruptcy estate, it does not legally do so. Abandonment is controlled by provisions of 11 U.S.C. § 554, and until a Chapter 7 Trustee files a notice of abandonment pursuant to that statute, or a party-in-interest requests abandonment of property from an estate, property is not abandoned from a Chapter 7 estate absent an order of the Court. With respect to general relief from the automatic stay of 11 U.S.C. § 362(a) with respect to property of the estate, as provided by 11 U.S.C. § 362(c), the automatic stay remains in effect until it is abandoned [11 U.S.C. § 362(c)(1)], and any actions other than those specifically *in rem* against the property continue to be stayed until the case is closed, the case is dismissed or a discharge is granted or denied [11 U.S.C. § 362(c)(2)]. Thus, a creditor wishing to pursue its *in rem* remedies against property originally included in a Chapter 7 estate – despite discharge of the debtor – which occurred in this case by order entered on July 18, 2005, cannot actually be assured that it has not violated the automatic stay until the property is no longer property of the bankruptcy estate. A no asset report by a Trustee does not in and of itself render property abandoned from an estate, and the Court deems it to be a path a diligent creditor will take to file what may seem to be a meaningless stay relief motion in a no asset case to pursue its *in rem* remedies against property of a Chapter 7 bankruptcy estate prior to the entry of an order of abandonment by the Court with respect to property against which *in rem* remedies are sought to be pursued, but prior to the closing of the case.

The intriguing thing about the debtors' objection is their assertion that they have equity in the property, which the Court takes to mean that exclusive of their claimed exemptions and the lien interests in the property, there may be administrable equity for the Chapter 7 Trustee.

IT IS ORDERED that a hearing will be held on **September 16, 2005, at 10:00 A.M.** to determine if the Chapter 7 Trustee should administer the debtors' property located at 2913 - 42nd Street, Highland, Indiana.

IT IS FURTHER ORDERED that the debtors' Objection to Motion to Abandon filed by Centier Bank is denied.

IT IS FURTHER ORDERED that Centier Bank shall take no action authorized by the Court's order entered on August 1, 2005, pending the scheduled hearing.

Dated at Hammond, Indiana on August 12, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee
Attorney for Creditor